ORIGINAL

EX PARTE OR LATE FILED

April 11, 2001

RECEIVED

APR 11 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

By Hand

Dorothy Attwood, Esq.
Chief, Common Carrier Bureau
Federal Communications Commission
Room 5-C450
445 12th St., SW
Washington, DC 20554

Re: Inter-Carrier Compensation for Internet Service Provider Traffic, CC Docket No. 99-68; Access Charge Reform, CC Docket No. 96-262

Dear Ms. Attwood:

On March 29, 2001, Chairman Powell informed the Telecommunications Subcommittee of the House Energy and Commerce Committee that a draft order concerning inter-carrier compensation for ISP-bound traffic had been circulated that same week (CC Docket No. 99-68), and that a draft order concerning CLEC access charges would be circulated soon (CC Docket No. 96-262). He stated his expectation that these items would be voted upon in the next few weeks. We welcome the Chairman's effort to complete action on these important matters, and we hereby submit this ex parte to assist in completing the record for each proceeding.

First, we have attached to this letter a one-page comparison of the CALLS transition plan to the two proposed transition plans for ISP-bound traffic and for CLEC access charges. The comparison shows that the targeted rate reduction for ILEC local switching under CALLS is 50% over five years. However, the targeted rate reduction for the same function when performed by CLECs in connection with ISP-bound traffic or with access traffic would be 74.5% and 87.1%, respectively, over only three years. The comparison goes on to show that the CALLS reduction constitutes only 2.1% of the ILECs' local and access revenues, while the ISP-bound traffic and access traffic reductions would be

15.8% and 13.7% of the same revenues for CLECs, amounting to a total reduction equaling 29.5% of the CLECs' combined local and access revenues.[1]

Turning to the first years of each proposed transition, the first-year reduction alone for ISP-bound traffic is 62% of the CLECs' total current reciprocal compensation revenues.[2] Similarly, the first year reduction for CLEC access rates would translate to an immediate 41.5% reduction in CLEC access revenues.[3] The total of $1.8B in first year reductions thus constitutes 18.9% of total CLEC local, reciprocal compensation, and access charge revenues.[4] This is manifestly a Draconian result by comparison with the CALLS plan, or any other measure.

The harsh nature of the above-ratio rate caps as proposed in the current plan -- .12 cents/MOU for the first six months, .10 cents/MOU for the next 18 months, and .07 cents/MOU for the last 12 months – is also underscored by the level of the negotiated rates that were announced yesterday between BellSouth and Level 3: .175 cents/MOU for '01, .15 cents/MOU for '02, and .1 cents/MOU for '03. Assuming the transition plan were to start July 1st, the above-ratio rate caps would be only 79%, 67% and 70% of levels voluntarily accepted by a major RBOC for the same time periods. Clearly, the current proposed rate caps need to be increased appreciably.

Second, we understand the proposed ISP-bound traffic transition plan would permit the ILECs the opportunity to prove that below-ratio traffic is ISP-bound, and thus subject to the Commission's rules governing above-ratio minutes. No state has adopted such approach, and there are compelling reasons why the Commission should decline to do so as well.

---

1 We note this disparity would be even more dramatic if the ILECs' receipt of $650M in universal service funds and increased recovery from end users under CALLS were also reflected in these numbers, which they are not.

2 March 23, 2001, ex parte of ALTS and CompTel, Scenario 5 (year 2000 CLEC recip com revenues of $1.95B minus year 2001 revenues of $ .75B equals $1.2B, or a 62% reduction).

3 First-year reduction to 2.5 cents/MOU from 4.27 cents/MOU average equals $0.6B, or a 41.5% reduction.

4 $1.2B recip comp first-year reduction + $ .6B first year access reduction = $1.8B, or 18.9% of total CLEC recip comp, local and access charge revenues.

As an evidentiary matter, the ILECs have advocated numerous devices that supposedly measure ISP-bound calls: the length of the call, the existence of a modem on one end of a call, correlation of the NXXs advertised by ISPs with usage, etc. These devices have been rejected by every state to which they have been presented. The only measurement methodology adopted to date is the 3:1 ratio analysis employed by New York and Texas.

No ILEC in this proceeding claims that it has now discovered how to properly measure ISP-bound traffic. Allowing ILECs to attack the treatment of below-ratio minutes would simply permit them to renew theories that have already been rejected, and which do not merit further consideration.

More fundamentally, however, allowing ILEC challenges to below-ratio minutes would fatally undercut the finality and repose that is a central goal of this proposed plan. If such a mechanism were contained in a final plan, the ILECs would immediately file "cases" purporting to show that below-ratio minutes are really ISP-bound, and they would then refuse to pay at the below-ratio state rates. This is as inevitable as predicting the sun will rise in the morning.

The competitive industry respectfully but urgently requests that the Commission avoid such a renewal of the uncertainty that has prevailed in this marketplace since 1997. Furthermore, there is no unfairness in omitting this provision. The origin of the New York ratio plan, which does not provide below-ratio challenges, arises from the original Staff proposal that the ratio be 5:1. The New York Public Service Commission subsequently adopted a 3:1 ratio, with an above-ratio opportunity for CLECs, as a compromise. We invite you to contact the New York Public Service Commission to confirm this fact.

Third, SBC has recently requested the Commission to address three specific "housekeeping" issues as follows:[5]

- Timing of the Federal Transition Plan -- SBC argues that it would be unfair to require ILECs to apply the Commission's transition plan to non-ISP local traffic during the period when the ILEC may have to litigate with certain CLECs concerning whether the Federal plan alters certain current

[5] SBC ex parte filed March 28, 2001.

interconnection contracts concerning ISP-bound traffic (March 28, 2001, ex parte at pp. 1-2). The Commission should deny this request. If some ILECs have entered contracts that are not affected by the transition plan, that is simply the consequence of their own business decisions. And during the time the issue may be subject to litigation, the status of the ILECs' payments – whether subject to refund or some other mechanism, etc. – will be governed by the specific contract language involved, and thus requires no action by this Commission.

- Application of bill-and-keep to non-ISP-bound traffic – SBC also argues that no state should be allowed to apply bill-and-keep to local traffic in general (including wireless) before also applying it to ISP-bound traffic (id. at p. 2). SBC misunderstands the logic of the proposed transition plan for ISP-bound traffic, which is to preserve the states' existing authority concerning non-ISP-bound traffic. Any attempt to bound that authority would be inconsistent with the plan, and unsupported by the notice and record.

- Application of the transition plan to ISP-bound traffic where the end user ISP is located outside the LEC's local calling area – SBC's third request is that the transition plan should not apply to traffic unless the called ISP end user is physically located within the LEC's local calling area (id. at p. 3). As discussed at length elsewhere in this proceeding, the location of a CLEC's terminating customer has no effect at all upon an originating ILEC's reciprocal compensation costs.[6] The only aspect of an ILEC's cost structure conceivably affected by a remote CLEC end user would be the cost of the interconnection architecture between the CLEC and ILEC, and the October 20, 2000, ex parte of Allegiance, Focal, Intermedia, Time Warner Telecom, and XO offered a proposal that fully addresses this issue. Accordingly, the Commission need not grant SBC's request.

Fourth, we also wish to inform you that the Arizona Corporation Commission reversed its policy in favor of bill and keep for ISP-bound traffic on March 29, 2001, and has now ordered Qwest to pay Level 3 the following rates:

[6] October 20, 2000, ex parte of Allegiance, Focal, Intermedia, Time Warner Telecom, and XO at pp. 2-4.

for the first year of the contract the rate is .35 cents/MOU, for the second year the rate is .3 cents/MOU, and for the last six months is .2 cents/MOU.

The Arizona Commission's action is particularly pertinent given an April 2d ex parte filed by QWEST. In its ex parte, QWEST complains that some of its states, including Arizona, have imposed bill-and-keep on a contract-by-contract basis. QWEST does not want to offer bill-and-keep for non-ISP-bound traffic until all ISP-bound traffic is first covered, so QWEST proposes to "fix" this issue by applying the proposed Federal rate caps to all local and wireless traffic until bill-and-keep is applied to all ISP-bound traffic.

QWEST's "fix" is based upon the mistaken assumption that under the proposed plan the existence of individual bill-and-keep outcomes pursuant to arbitrations in a state somehow entitle it to impose bill-and-keep upon all ISP-bound traffic (including the ISP-bound traffic of CLECs not affected by those arbitrations), and thereby trigger a requirement of immediate bill-and-keep for non-ISP-bound traffic. This is not correct. As we understand it, the plan directs that the applicable state rate for a CLEC be applied to that CLEC's above-ratio traffic subject to the Federal limitations, provided the ILEC applies those same rates (subject to the Federal limitations) to the traffic delivered to the ILEC by that specific CLEC. Where rates differ among CLECs in the same state, it is the CLEC-specific rates that are governed by the above-cap mechanisms. As Qwest recognized in some cases the existing interconnection agreement with individual CLECs specifically provide that the reciprocal compensation rate will not change regardless of a state or FCC ruling.

QWEST's mistaken understanding of the transition plan would permit ILECs to simply announce the 'proper' statewide rate -- as QWEST appears all too willing to do here (and note that QWEST tries to portray Arizona as a bill-and-keep state, even though that Commission recently repudiated bill-and-keep, as noted above). The Commission should take care to avoid the controversy that would result if the ILECs were empowered to impose their perception of a state-approved rate to all above-ratio traffic within a state, instead of the actual state rate (whether approved by negotiation, arbitration, or opt-in) applicable between specific CLECs and ILECs.

* * *

The competitive telecommunications industry supports the Commission's efforts to complete its examination of inter-carrier compensation for ISP-bound traffic and access traffic as promptly as possible. Please let us know if we can assist you with these inquiries in any way.

Sincerely,

John D. Windhausen, Jr./cap
John D. Windhausen, Jr.
President, ALTS

H. Russell Frisby, Jr./cap
H. Russell Frisby, Jr.
President, CompTel

cc: M.R. Salas
K. Dixon
G. Reynolds
J. Jackson
T. Preiss
R. McDonald
M. MacBride
J. Goldstein
R. Beynon
D. Shetler
J. Zinman
S. Whitesell

A Comparison of Three Transition Plans

	CALLS	Recip Comp	Access Charges
Rate element	Local switching	Local switching	Local switching
Original rate	1.100¢/MOU[1]	0.275¢/MOU[2]	4.270¢/MOU[3]
Target rate	0.550¢/MOU[4]	0.070¢/MOU	0.550¢/MOU[4]
Percentage rate reduction	**50%**	**74.5%**	**87.1%**
Duration	5 years[5]	3 years	3 years
Total reduction	$2.1B[6]	$1.5B[7]	$1.3B[8]
Total revenues	$100B[9]	$9.5B[10]	$9.5B[10]
Reduction as % of total	**2.1%**	**15.8%**	**13.7%**
Change in stock prices since 03/29/00	- 37.1%[11]	- 86.6%[11]	- 86.6%[11]
Average debt ratings	AA	B2/B – Caa1/B-	B2/B - Caa1/B

1. Access Charge Reform, Sixth Report and Order (CALLS), CC Docket No. 96-262, released May 31, 2000, at para. 176.
2. October 12, 2000, ex parte of BellSouth, Verizon, SBC and Qwest. See also the October 20, 2000, ex parte filed by Allegiance, Focal, Intermedia, Time Warner Telecom, and XO at Attachment A (average recip comp rate of .27 cents/MOU, weighted by access lines).
3. ALTS comments in CC No. 96-262 filed January 11, 2001, Att. 1-7, pp. iii, 7.
4. CALLS at para. 176.
5. Id.
6. Id. at para. 151. Actual ILEC impact was reduced by $650M in universal service payments and higher end user payments (para. 146).
7. March 23, 2001, ex parte of ALTS and CompTel, Scenario 5.
8. Estimated access revenues are 20% of $7.5B total CLEC local revenues.
9. As of year-end 1999, Credit Suisse First Boston, Telecom Services – CLECs, March 2001, pp. 7-9.
10. State of Local Competition. ALTS, February 2001, p. 26 ($7.5B), plus $2.0B in recip comp (BellSouth, et al., ex parte filed December 22, 2000) = $9.5B.
11. CSFB, Telecom Weekly Review, March 30, 2001, p. 1.